

<b>SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS</b> <i>OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, &amp; 30</i>				1. REQUISITION NUMBER		PAGE 1 of 44	
2. CONTRACT NO.		3. AWARD/EFFECTIVE DATE		4. ORDER NUMBER		5. SOLICITATION NUMBER DE-RQ26-04NT42096	
6. SOLICITATION ISSUE DATE <b>Friday, March 5, 2004</b>		7. FOR SOLICITATION INFORMATION CALL:		a. NAME <b>Angela Bosley</b>		b. TELEPHONE NUMBER (No collect calls) <b>304-285-4149</b>	
9. ISSUED BY  <b>U.S. Department of Energy National Energy Technology Laboratory PO Box 880 3610 Collins Ferry Road Morgantown, WV 26507-0880</b>		CODE		10. THIS ACQUISITION IS  <input checked="" type="checkbox"/> UNRESTRICTED <input type="checkbox"/> SET ASIDE % FOR  <input type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> SMALL DISADV. BUSINESS <input type="checkbox"/> 8(A) NAICS: 562111 SIZE STANDARD: 10.5 million		11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED <input type="checkbox"/> SEE SCHEDULE  <input type="checkbox"/> 13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)  13b. RATING  14. METHOD OF SOLICITATION <input checked="" type="checkbox"/> RFQ <input type="checkbox"/> IFB <input type="checkbox"/> RFP	
15. DELIVER TO		CODE		16. ADMINISTERED BY  <b>U.S. Department of Energy National Energy Technology Laboratory PO Box 880, 3610 Collins Ferry Road Morgantown, WV 26507-0880</b>		CODE	
17a. CONTRACTOR/ OFFEROR		CODE		FACILITY CODE		18a. PAYMENT WILL BE MADE BY  <b>See Section G, Article G.2</b>	
TELEPHONE NO.		17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER <input type="checkbox"/>		18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED <input type="checkbox"/> SEE ADDENDUM			
19. ITEM NO.		20. SCHEDULE OF SUPPLIES/SERVICES <b>Non-Hazardous Solid Waste Disposal As Described in B.1</b>  (Use Reverse and/or Attach Additional Sheets as Necessary)		21. QUANTITY		22. UNIT	
						23. UNIT PRICE	
						24. AMOUNT	
25. ACCOUNTING AND APPROPRIATION DATA						26. TOTAL AWARD AMOUNT (For Govt. Use Only)	
<input checked="" type="checkbox"/> 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4. FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDENDA <input checked="" type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED. <input type="checkbox"/> 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4. FAR 52.212-5 IS ATTACHED. ADDENDA <input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED.							
<input checked="" type="checkbox"/> 28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN 2 COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED HEREIN.						<input type="checkbox"/> 29. AWARD OF CONTRACT: REFERENCE _____ OFFER DATED _____. YOUR OFFER SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS:	
30a. SIGNATURE OF OFFEROR/CONTRACTOR				31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)			
30b. NAME AND TITLE OF SIGNER		30c. DATE SIGNED		31b. NAME OF CONTRACTING OFFICER <b>James C. Knudsen</b>		31c. DATE SIGNED	

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**SECTION B - SUPPLIES OR SERVICES AND PRICES/COSTS**

**B.1 SERVICES BEING ACQUIRED (JUNE 2003)**

The Contractor shall furnish all personnel, equipment, material, supplies, and services except as may be expressly set forth in this contract as furnished by the Government and shall perform the following items of work in accordance with Section J, Attachment A, Statement of Work.

**BASE YEAR – THREE YEARS**

Item 1            Non-Hazardous Solid Waste Disposal in accordance with the Statement of Work, Section B, Article 1 located in Section J of this solicitation. Please note that pricing for this item is a loaded rate and the total monthly rate charged for these services shall include the cost for pickup, disposal, maintenance, rental fee for dumpster usage, etc.

\$ \_\_\_\_\_ per month

Item 2            Rental of one (1) – 40 cubic yard dumpster to be placed within a fenced, locked area provided by DOE/NETL in accordance with the Statement of Work, Section B, Article 2 located in Section J of this solicitation.

\$ \_\_\_\_\_ per month

Item 3            Fee per ton to empty dumpster listed in Item 2 above on an “as called” basis.

\$ \_\_\_\_\_ per ton

**FIRST OPTION YEAR**

Item 4            Non-Hazardous Solid Waste Disposal in accordance with the Statement of Work, Section B, Article 1 located in Section J of this solicitation. Please note that pricing for this item is a loaded rate and the total monthly rate charged for these services shall include the cost for pickup, disposal, maintenance, rental fee for dumpster usage, etc.

\$ \_\_\_\_\_ per month

Item 5            Rental of one (1) – 40 cubic yard dumpster to be placed within a fenced, locked area provided by DOE/NETL in accordance with the Statement of Work, Section B, Article 2 located in Section J of this solicitation.

\$ \_\_\_\_\_ per month

Item 6            Fee per ton to empty dumpster listed in Item 2 above on an “as called” basis.

\$ \_\_\_\_\_ per ton

**SECOND OPTION YEAR**

Item 7            Non-Hazardous Solid Waste Disposal in accordance with the Statement of Work, Section B, Article 1 located in Section J of this solicitation. Please note that pricing for this item is a loaded rate and the total monthly rate charged for these services shall include the cost for pickup, disposal, maintenance, rental fee for dumpster usage, etc.

\$ \_\_\_\_\_ per month

- Item 8 Rental of one (1) – 40 cubic yard dumpster to be placed within a fenced, locked area provided by DOE/NETL in accordance with the Statement of Work, Section B, Article 2 located in Section J of this solicitation.

\$ \_\_\_\_\_ per month

- Item 9 Fee per ton to empty dumpster listed in Item 2 above on an “as called” basis.

\$ \_\_\_\_\_ per ton

**BASE CONTRACT**

Subtotal of line items 1 and 2	\$ <u>TBD</u>
Subtotal ceiling amount of line item 3	\$ <u>TBD</u>
<b>TOTAL BASE CONTRACT AMOUNT</b>	<b>\$ <u>TBD</u></b>

**OPTION PERIOD 1**

Subtotal of line items 4 and 5	\$ <u>TBD</u>
Subtotal ceiling amount of line item 6	\$ <u>TBD</u>
<b>TOTAL OPTION PERIOD 1 AMOUNT</b>	<b>\$ <u>TBD</u></b>

**OPTION PERIOD 2**

Subtotal of line items 7 and 8	\$ <u>TBD</u>
Subtotal ceiling amount of line item 9	\$ <u>TBD</u>
<b>TOTAL OPTION PERIOD 2 AMOUNT</b>	<b>\$ <u>TBD</u></b>

**B.2 RATES**

If the landfill used by the Contractor for disposal of refuse picked up under this contract adjusts its fees for refuse disposal, the Contractor is authorized to submit a price adjustment request to the Contracting Officer. The request shall set forth the change in landfill fee structure, the authority under which the fee structure change is being made, a discussion of other landfill sites available and the cost associated with each, the basis of the fee assignment (e.g. \$ per ton, \$ per vehicle load, etc.) and the proposed impact on prices paid under this contract for each of the line items. The request is subject to negotiation, and any adjustments to the pricing structure will be set forth in a modification to the contract. Any price adjustments made by operation of this clause will be applicable only to services rendered after the effective date of the modification changing prices.

**B.3 52.217-8 OPTION TO EXTEND SERVICES. (NOV 1999)**

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within thirty (30) days of the end of the contract period. Primary application of this authority would occur if delays in awarding a successor contract at the scheduled completion of this award were apparent

**B.4 52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT. (MAR 2000)**

(a) The Government may extend the term of this contract by written notice to the Contractor within the terms of the contract provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 30 days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option

clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed 60 months.

#### **B.5 LIMITATION OF GOVERNMENT'S OBLIGATION**

(a) Contract line item(s) 1 through 3 are incrementally funded. For these item(s), the sum of **\$TBD** of the total price is presently available for payment and allotted to this contract.

(b) For item(s) identified in paragraph (a) of this clause, the Contractor agrees to perform up to the point at which the total amount payable by the Government, including reimbursement in the event of termination of those item(s) for the Government's convenience, approximates the total amount currently allotted to the contract. The Contractor will not be obligated to continue work on those item(s) beyond that point. The Government will not be obligated in any event to reimburse the Contractor in excess of the amount allotted to the contract for those item(s) regardless of anything to the contrary in the clause entitled "Termination for Convenience of the Government." As used in this clause, the total amount payable by the Government in the event of termination of applicable contract line item(s) for convenience includes costs, profit, and estimated termination settlement costs for those item(s).

(c) The Contractor will notify the Contracting Officer in writing at least sixty (60) days prior to the date when, in the Contractor's best judgment, the work will reach the point at which the total amount payable by the Government, including any cost for termination of convenience, will approximate seventy-five (75) percent of the total amount then allotted to the contract for performance of the applicable item(s). The notification will state (1) the estimated date when that point will be reached and (2) an estimate of additional funding, if any, needed to continue timely performance of applicable line items. If after such notification, additional funds are not allotted by the date identified in the Contractor's notification, or by an agreed substitute date, the Contracting Officer will terminate any item(s) for which additional funds have not been allotted, pursuant to the clause of this contract entitled "termination for Convenience of the Government."

(d) If, solely by reason of failure of the Government to allot additional funds in amounts sufficient for timely performance of the contract line item(s) identified in paragraph (a) of this clause, the Contractor incurs additional costs or is delayed in the performance of the work under this contract and if additional funds are allotted, an equitable adjustment will be made in the price or prices (including appropriate target, billing, and ceiling prices where applicable) of the item(s), or in the time of delivery, or both. Failure to agree to any such equitable adjustment hereunder will be a dispute concerning a question of fact within the meaning of the clause entitled "Disputes."

(e) The Government may at any time prior to termination allot additional funds for the performance of the contract line item(s) identified in paragraph (a) of this clause.

(f) The termination provisions of this clause do not limit the rights of the Government under the clause entitled "Default." The provisions of this clause are limited to the work and allotment of funds for the contract line item(s) set forth in paragraph (a) of this clause. This clause no longer applies once the contract is fully funded except with regards to the rights or obligations of the parties concerning equitable adjustments negotiated under paragraphs (d) and (e) of this clause.

(g) Nothing in this clause affects the right of the Government to terminate this contract pursuant to the clause of this contract entitled "Termination for the Convenience of the Government."

**SECTION C - DESCRIPTION/SPECIFICATIONS/WORK STATEMENT**

**C.1 STATEMENT OF WORK (NOV 1997)**

The Statement of Work is located in Part III -- Section J, Attachment A to this contract.

**SECTION E - INSPECTION AND ACCEPTANCE**

**E.1 INSPECTION (NOV 1997)**

Inspection of all items under this contract shall be accomplished by the DOE Contracting Officer's Representative (COR), or any other duly authorized Government representative.

**E.2 ACCEPTANCE (MAR 1999)**

Final acceptance of all work and effort under this contract (including "Reporting Requirements," if any) shall be accomplished by the Contracting Officer.



**SECTION F - DELIVERIES OR PERFORMANCE**

**F.1 PERIOD OF PERFORMANCE (BASE CONTRACT WITH OPTION(S)) (JUNE 2003)**

**BASE CONTRACT**

The work to be performed under the Base Contract (Reference Part I, Section, B) shall commence on the effective date of the contract and shall continue for thirty-six months.

NOTE: The government may elect not to exercise either of the options, to exercise either option, or to exercise both options.

**OPTION I**

If Option I is exercised, the work to be performed under the Contract option (Reference Part I, Section B) shall be for a period of twelve months from the effective date of the exercised option. This includes time for submission of all reports, review of those reports by DOE, and submission of the approved final report by the Contractor.

**OPTION II**

If Option II is exercised, the work to be performed under the Contract option (Reference Part I, Section B) shall be for a period of twelve months from the effective date of the exercised option. This includes time for submission of all reports, review of those reports by DOE, and submission of the approved final report by the Contractor.

**F.2 PRINCIPAL PLACE OF PERFORMANCE - NETL (JULY 2003)**

The principal place of performance under this contract shall be at the National Energy Technology Laboratory located at 3610 Collins Ferry Road, Morgantown, WV.

## **SECTION G - CONTRACT ADMINISTRATION DATA**

### **G.1 CORRESPONDENCE PROCEDURES (FEB 2000)**

To promote timely and effective administration, correspondence (except for invoices and reports) submitted under this contract shall be subject to the following procedures:

(a) Technical Correspondence

Technical correspondence (as used herein, this term excludes technical correspondence where patent or technical data issues are involved and correspondence which proposes or otherwise involves waivers, deviations, or modifications to the requirements, terms, or conditions, of this contract) shall be addressed to the DOE Contracting Officer's Representative, with an information copy of the correspondence to the DOE Contract Specialist.

(b) Other Correspondence

All other correspondence shall be addressed to the DOE Contract Specialist with information copies of the correspondence to the DOE Contracting Officer's Representative.

(c) Subject Line(s)

All correspondence shall contain a subject line commencing with the contract number, i.e., DE-AC26-04NT42096, and identifying the specific contract action requested.

### **G.2 SUBMISSION OF VOUCHERS/INVOICES (APR 2001)**

(a) Voucher Form (SF 1034)

In requesting reimbursement, contractors shall use Standard Form 1034 (Public Voucher for Purchases and Services Other Than Personal). Electronic versions of the SF1034 can be found on the NETL website at <http://www.netl.doe.gov/business/forms/forms.html>. Acceptable substitutes for the forms (which provide the same necessary information) may be used.

In accordance with FAR 52.232-25, "Prompt Payment," all invoices shall include the following information:

- (1) Name and address of contractor/vendor
- (2) Invoice date
- (3) Contract number or other authorization for delivery of property or service
- (4) Description, price and quantity of property and services actually delivered or rendered
- (5) Shipping and payment terms
- (6) Name (where practicable), title, phone number and complete mailing address of responsible official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment)
- (7) Name (where practicable), title, phone number and complete mailing address of the person to be notified in the event of a defective invoice.
- (8) Other substantiating documentation or information as required by the contract.

(b) Supporting Documentation

In accordance with the Statement of Work, Section B, Article 2 located in Section J, Weigh slips must be provided as support documentation with each invoice that bills for a per ton fee.

(d) Submission of Voucher

Submit one copy of the original voucher and Supporting Documentation to the following payment office:

U. S. Department of Energy  
Oak Ridge Financial Services Center  
P. O. Box 4787  
200 Administration Road  
Oak Ridge, TN 37831

In addition, submit two copies of the voucher including the certified Statement of Cost and Supporting Documentation to the following address:

U. S. Department of Energy  
National Energy Technology Laboratory  
ATTN: Accounts Payable  
3610 Collins Ferry Road  
P.O. Box 880  
Morgantown, WV 26507-0880

(e) Billing Period

Vouchers shall be submitted no more frequently than monthly (unless prior written consent of the Contracting Officer for more frequent billing is obtained).

(f) Payment Method

In accordance with Mandatory Information for Electronic Funds Transfer Payment, payment under this contract will be made utilizing the Automated Clearing House (ACH) network. The payment system is specifically referred to as "Vendor Express."

(g) Defective Invoices

Invoices that are determined to be defective, and therefore not suitable for payment, shall be returned to the Contractor as soon as practicable, specifying the reason(s) why the invoice is not proper.

(h) Status of Payments

The Oak Ridge Financial Service Center (ORFSC) has a system via Internet, in which contractors can request information about payments by invoice, by contract number, and/or by paid date. The system is called Vendor Inquiry Payment Electronic Reporting System (VIPERS) and is available to contractors at the following website: <http://finweb.oro.doe.gov/vipers.htm>. Contractors must have a federal tax identification number (TIN) and then obtain a personal identification number (PIN) to access the system.

**G.3 NOTICE OF INVOICE PROCESSING BY SUPPORT CONTRACTOR (DEC 1999)**

A support service contractor performs the function of processing of all invoices submitted to the National Energy Technology Laboratory, against its awards. Therefore, this contractor has access to your business confidential cost/rate information. A special provision in this contractor's award requires the confidential treatment by all contractor employees of any and all business confidential information of other contractors and financial assistance recipients to which they have access.

## **SECTION H - SPECIAL CONTRACT REQUIREMENTS**

### **H.1 CONSECUTIVE NUMBERING (JAN 1999)**

Due to automated procedures employed in formulating this document, clauses and provisions contained within it may not always be consecutively numbered.

### **H.2 WORKING HOURS (JAN 2000)**

The Contractor shall perform services under this award Monday through Friday (except holidays), anytime during the following off-peak hours:

4:00 a.m. EST to 7:00 a.m. EST

**OR**

9:30 a.m. EST to 5:00 p.m. EST

Federal Holiday designations may be accessed electronically at <http://www.opm.gov/FEDHOL/>.

### **H.3 TECHNICAL DIRECTION (JUNE 1998)**

- (a) Performance of the work under this contract shall be subject to the technical direction of the Contracting Officer's Representative (COR). The term "technical direction" is defined to include, without limitation:
  - (1) Directions to the Contractor which redirect the contract effort, shift work emphasis between work areas or tasks, required pursuit of certain lines of inquiry, fill in details or otherwise serve to accomplish the contractual Statement of Work.
  - (2) Provision of written information to the Contractor which assists in the interpretation of drawings, specifications or technical portions of the work description.
  - (3) Review and, where required by the contract, approval of technical reports, drawings, specifications and technical information to be delivered by the Contractor to the Government under the contract.
- (b) Technical direction must be within the scope of work stated in the contract. The COR does not have the authority to, and may not, issue any technical direction which:
  - (1) Constitutes an assignment of additional work outside the Statement of Work;
  - (2) Constitutes a change as defined in the contract clause entitled "Changes";
  - (3) In any manner causes an increase or decrease in the total estimated contract cost, the fixed fee (if any), or the time required for contract performance;
  - (4) Changes any of the expressed terms, conditions or specifications of the contract; or
  - (5) Interferes with the Contractor's right to perform the terms and conditions of the contract.
- (c) All technical directions shall be issued in writing by the COR.
- (d) The Contractor shall proceed promptly with the performance of technical directions duly issued by the COR in the manner prescribed by this clause and within the authority under the provisions of this clause. If, in the opinion of the Contractor, any instruction or direction by the COR falls within one of the categories defined in (b)(1) through (5) above, the Contractor shall not proceed but shall notify the Contracting Officer in writing within five (5) working days after receipt of any such instruction or direction and shall request the Contracting Officer to modify the contract accordingly. Upon receiving

the notification from the Contractor, the Contracting Officer shall:

- (1) Advise the Contractor in writing within thirty (30) days after receipt of the Contractor's letter that the technical direction is within the scope of the contract effort and does not constitute a change under the "Changes" clause of the contract; or
  - (2) Advise the Contractor within a reasonable time that the Government will issue a written change order.
- (e) A failure of the Contractor and Contracting Officer to agree that the technical direction is within the scope of the contract, or a failure to agree upon the contract action to be taken with respect thereto shall be subject to the provisions of the clause entitled "Disputes - Alternate I".

#### **H.4 MODIFICATION AUTHORITY (NOV 1997)**

Notwithstanding any of the other provisions of this contract, the Contracting Officer shall be the only individual authorized to:

- (a) accept nonconforming work,
- (b) waive any requirement of this contract, or
- (c) modify any term or condition of this contract.

#### **H.5 GOVERNMENT PROPERTY AND DATA - NONE (NOV 1997)**

The Government is not obligated to furnish any real or personal property or data under this contract, and the Contractor is not authorized to acquire any real or personal property or data at the Government's expense under this contract.

#### **H.6 REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF THE OFFEROR (JUNE 1998)**

The Representations, Certifications and Other Statements of the Offeror for this contract are hereby incorporated by reference.

#### **H.7 CONTRACTOR INTERFACE WITH OTHER CONTRACTORS AND/OR GOVERNMENT EMPLOYEES (MAY 2001)**

The contractor shall cooperate fully with all other on-site DOE contractors (including, but not limited to, support service, architect and engineering, janitorial, computer operation contractors, or consultants) and Government employees, and carefully fit its own work to such other work as may be directed by the Contracting Officer or the Contracting Officers Representative. The contractor shall not commit, or permit, any act which will interfere with the performance of work by any other contractor or by Government employees.

#### **H.8 INSURANCE -- MINIMUM REQUIREMENTS (JULY 2000)**

The Contractor shall provide all insurance necessary to fully protect the Government from all claims arising out of the performance of this contract and/or arising from the acts of their employees, business invitees or licensees, and will be required to furnish evidence of such insurance before commencing operations hereunder. The limits of the insurer's liability listed below are minimum requirements of insurance to be carried by the Contractor; however, such limits will not be deemed to limit the Contractor's liability to the Government.

The required amount of insurance to be carried by the Contractor under this section may be changed upon the Government's written notice to the Contractor.

#### Worker's Compensation and Employer's Liability.

Contractors are required to comply with applicable Federal and State workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the employer's liability section of the insurance policy, except when contract operations are so commingled with a Contractor's commercial operations that it would not be practical to require this coverage. Employer's liability coverage of at least \$100,000 shall be required.

#### General Liability.

The Contractor shall obtain Bodily injury liability insurance coverage written on the comprehensive form of policy of at least \$500,000 per occurrence.

#### Automobile Liability.

The Contractor shall obtain Automobile liability insurance written on the comprehensive form of policy. The policy shall provide for bodily injury and property damage liability covering the operation of all automobiles (including Government-furnished vehicles operated by the Contractor personnel) used in connection with performing the contract. Coverage of at least \$200,000 per person and \$500,000 per occurrence for bodily injury and \$20,000 per occurrence for property damage.

### **H.9 COMMUNITY COMMITMENT (JUNE 2003)**

It is the policy of the National Energy Technology Laboratory (NETL) to be a constructive partner in the geographic region in which NETL conducts its business. The basic elements of this policy include: (1) recognizing the diverse interests of the region and its stakeholders; (2) engaging regional stakeholders in issues and concerns of mutual interest; and (3) recognizing that giving back to the community is a worthwhile business practice. Accordingly, the contractor agrees that its business operations and performance under the contract will be consistent with the intent of the policy and elements set forth above.

### **H.10 COMPLIANCE WITH APPLICABLE FEDERAL, STATE AND LOCAL REQUIREMENTS (FEB 1998)**

In performing work under this contract, the Contractor shall comply with all relevant federal, state, and local statutes, ordinances, laws, and regulations.

### **H.11 INDEMNITY -- ENVIRONMENTAL, HEALTH AND SAFETY VIOLATIONS (MAR 2003)**

Should the contractor, in the performance of work under this contract, fail to comply with the requirements of environmental permits, local laws or regulations, state laws or regulations, Federal laws or regulations, the Statement of Work and its Attachments and cause any environmental, health, or safety liability to be assessed against the Government, the contractor agrees to indemnify the Government for this liability. This requirement shall be placed in all subcontracts awarded by the contractor under this contract. The provisions of this clause are limited to liabilities not otherwise addressed by other provisions of this contract.

### **H.12 MINIMUM WAGE DETERMINATION AND FRINGE BENEFITS (NOV 1997)**

In the performance of this contract the Contractor shall comply with the requirements of U.S. Department of Labor Wage Determination Number 1994-2573, Revision 20, dated May 30, 2003. A copy of this Wage Determination is attached to this contract (see Part III, Section J, Attachment B).

## **SECTION I - CONTRACT CLAUSES**

### **I.1 52.252-2 CLAUSES INCORPORATED BY REFERENCE. (FEB 1998)**

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

Federal Acquisition Regulations (Clauses starting with 52): <http://www.arnet.gov/far/index.html>

Department of Energy Regulations (Clauses starting with 952): <http://www.professionals.doe.gov>

### **I.2 52.202-1 DEFINITIONS. DEC 2001**

### **I.3 952.202-1 DEFINITIONS.**

### **I.4 52.212-4 CONTRACT TERMS AND CONDITIONS -- COMMERCIAL ITEMS (OCT 2003)**

(a) *Inspection/Acceptance.* The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. The Government must exercise its post-acceptance rights --

- (1) Within a reasonable time after the defect was discovered or should have been discovered; and
- (2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) *Assignment.* The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C.3727). However, when a third party makes payment (e.g., use of the Governmentwide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

(c) *Changes.* Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) *Disputes.* This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) *Definitions.* The clause at FAR 52.202-1, Definitions, is incorporated herein by reference.

(f) *Excusable delays.* The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) *Invoice.*

(1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include -

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- (i) Name and address of the Contractor;
- (ii) Invoice date and number;
- (iii) Contract number, contract line item number and, if applicable, the order number;
- (iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;
- (v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;
- (vi) Terms of any discount for prompt payment offered;
- (vii) Name and address of official to whom payment is to be sent;
- (viii) Name, title, and phone number of person to notify in event of defective invoice; and
- (ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.
- (x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (*e.g.*, 52.232-33, Payment by Electronic Funds Transfer—Central Contractor Registration, or 52.232-34, Payment by Electronic Funds Transfer—Other Than Central Contractor Registration), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(2) Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR part 1315.

(h) *Patent indemnity.* The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) *Payment.*

(1) Items accepted. Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(2) Prompt Payment. The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and prompt payment regulations at 5 CFR Part 1315.



(3) Electronic Funds Transfer (EFT). If the Government makes payment by EFT, see 52.212-5(b) for the appropriate EFT clause.

(4) Discount. In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(5) Overpayments. If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall immediately notify the Contracting Officer and request instructions for disposition of the overpayment.

(j) *Risk of loss*. Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) *Taxes*. The contract price includes all applicable Federal, State, and local taxes and duties.

(l) *Termination for the Government's convenience*. The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) *Termination for cause*. The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) *Title*. Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) *Warranty*. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) *Limitation of liability*. Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) *Other compliances*. The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(r) *Compliance with laws unique to Government contracts*. The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 327, *et seq.*, Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.

(s) *Order of precedence.* Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

- (1) The schedule of supplies/services.
- (2) The Assignments, Disputes, Payments, Invoice, Other Compliances, and Compliance with Laws Unique to Government Contracts paragraphs of this clause.
- (3) The clause at 52.212-5.
- (4) Addenda to this solicitation or contract, including any license agreements for computer software.
- (5) Solicitation provisions if this is a solicitation.
- (6) Other paragraphs of this clause.
- (7) The Standard Form 1449.
- (8) Other documents, exhibits, and attachments.
- (9) The specification.

(t) *Central Contractor Registration (CCR).*

(1) Unless exempted by an addendum to this contract, the Contractor is responsible during performance and through final payment of any contract for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(2)

(i) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in Subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to:

(A) Change the name in the CCR database;

(B) Comply with the requirements of Subpart 42.12 of the FAR;

(C) Agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (t)(2)(i) of this clause, or fails to perform the agreement at paragraph (t)(2)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.

(6) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see FAR Subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.

(7) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the Internet at <http://www.ccr.gov> or by calling 1-888-227-2423, or 269-961-5757.

**I.5 52.212-4 - ADDENDUM -- CONTRACT TERMS AND CONDITIONS--COMMERCIAL ITEMS (OCT 2003)**

Inspection/Acceptance – See Section E, Articles E.1 and E.2

Submission of Invoices – See Section G, Articles G.2 and G.3

Indemnity – See Section H, Article H.15

**I.6 52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS -- COMMERCIAL ITEMS (JAN 2004)**

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clause, which is incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items: 52.233-3, Protest after Award (Aug 1996)(31 U.S.C 3553).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the contracting officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

\_\_\_ (1) 52.203-6, Restrictions on Subcontractor Sales to the Government (Jul 1995), with Alternate I (Oct 1995)(41 U.S.C. 253g and 10 U.S.C. 2402).

\_\_\_ (2) 52.219-3, Notice of Total HUBZone Set-Aside (Jan 1999)(15 U.S.C. 657a).

\_\_\_ (3) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Jan 1999) (if the offeror elects to waive the preference, it shall so indicate in its offer)(15 U.S.C. 657a).

\_\_\_ (4) (i) 52.219-5, Very Small Business Set-Aside (June 2003)(Pub. L. 103-403, section 304, Small Business Reauthorization and Amendments Act of 1994).

\_\_\_ (ii) Alternate I (Mar 1999) of 52.219-5.

\_\_\_ (iii) Alternate II (June 2003) of 52.219-5.

\_\_\_ (5) (i) 52.219-6, Notice of Total Small Business Set-Aside (June 2003) (15 U.S.C. 644).

\_\_\_ (ii) Alternate I (Oct 1995) of 52.219-6.

\_\_\_ (6) (i) 52.219-7, Notice of Partial Small Business Set-Aside (June 2003)(15 U.S.C. 644).

\_\_\_ (ii) Alternate I (Oct 1995) of 52.219-7.

\_\_\_ (7) 52.219-8, Utilization of Small Business Concerns (Oct 2000) (15 U.S.C. 637(d)(2) and (3)).

\_\_\_ (8) (i) 52.219-9, Small Business Subcontracting Plan (Jan 2002)(15 U.S.C. 637 (d)(4)).

\_\_\_ (ii) Alternate I (Oct 2001) of 52.219-9.

\_\_\_ (iii) Alternate II (Oct 2001) of 52.219-9.

\_\_\_ (9) 52.219-14, Limitations on Subcontracting (Dec 1996)(15 U.S.C. 637(a)(14)).

\_\_\_ (10) (i) 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (June 2003)(Pub. L. 103-355, section 7102, and 10 U.S.C. 2323) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).

\_\_\_ (ii) Alternate I (June 2003) of 52.219-23.

\_\_\_ (11) 52.219-25, Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting (Oct 1999)(Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).

\_\_\_ (12) 52.219-26, Small Disadvantaged Business Participation Program—Incentive Subcontracting (Oct 2000)(Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).

X (13) 52.222-3, Convict Labor (June 2003)(E.O. 11755).

\_\_\_ (14) 52.222-19, Child Labor—Cooperation with Authorities and Remedies (Jan 2004) (E.O. 13126).

X (15) 52.222-21, Prohibition of Segregated Facilities (Feb 1999).

X (16) 52.222-26, Equal Opportunity (Apr 2002)(E.O. 11246).

X (17) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001)(38 U.S.C. 4212).

X (18) 52.222-36, Affirmative Action for Workers with Disabilities (Jun 1998)(29 U.S.C. 793).

X (19) 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001)(38 U.S.C. 4212).

\_\_\_ (20) (i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Products (Aug 2000)(42 U.S.C. 6962(c)(3)(A)(ii)).

\_\_\_ (ii) Alternate I (Aug 2000) of 52.223-9 (42 U.S.C. 6962(i)(2)(C)).

\_\_\_ (21) 52.225-1, Buy American Act--Supplies (June 2003)(41 U.S.C. 10a-10d).

\_\_\_ (22) (i) 52.225-3, Buy American Act --Free Trade Agreement -- Israeli Trade Act (Jan 2004)(41 U.S.C. 10a-10d, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note, Pub. L. 108-77,108-78).

\_\_\_ (ii) Alternate I (Jan 2004) of 52.225-3.

\_\_\_ (iii) Alternate II (Jan 2004) of 52.225-3.

\_\_\_ (23) 52.225-5, Trade Agreements (Jan 2004)(19 U.S.C. 2501, *et seq.*, 19 U.S.C. 3301 note).

X (24) 52.225-13, Restrictions on Certain Foreign Purchases (Oct 2003) (E.o.s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

\_\_\_ (25) 52.225-15, Sanctioned European Union Country End Products (Feb 2000)(E.O. 12849).

\_\_\_ (26) 52.225-16, Sanctioned European Union Country Services (Feb 2000)(E.O. 12849).

\_\_\_ (27) 52.232-29, Terms for Financing of Purchases of Commercial Items (Feb 2002)(41 U.S.C. 255(f), 10 U.S.C. 2307(f)).

\_\_\_ (28) 52.232.30, Installment Payments for Commercial Items (Oct 1995)(41 U.S.C. 255(f), 10 U.S.C. 2307(f)).

X (29) 52.232-33, Payment by Electronic Funds Transfer—Central Contractor Registration (Oct. 2003)(31 U.S.C. 3332).

\_\_\_ (30) 52.232-34, Payment by Electronic Funds Transfer—Other Than Central Contractor Registration (May 1999)(31 U.S.C. 3332).

\_\_\_ (31) 52.232-36, Payment by Third Party (May 1999)(31 U.S.C. 3332).

\_\_\_ (32) 52.239-1, Privacy or Security Safeguards (Aug 1996)(5 U.S.C. 552a).

\_\_\_ (33) (i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Apr 2003)(46 U.S.C. 1241 and 10 U.S.C. 2631).

\_\_\_ (ii) Alternate I (Apr 1984) of 52.247-64.

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or executive orders applicable to acquisitions of commercial items:

X (1) 52.222-41, Service Contract Act of 1965, as Amended (May 1989)(41 U.S.C. 351, *et seq.*).

\_\_\_ (2) 52.222-42, Statement of Equivalent Rates for Federal Hires (May 1989)(29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).

X (3) 52.222-43, Fair Labor Standards Act and Service Contract Act -- Price Adjustment (Multiple Year and Option Contracts) (May 1989)(29 U.S.C.206 and 41 U.S.C. 351, *et seq.*).

\_\_\_ (4) 52.222-44, Fair Labor Standards Act and Service Contract Act -- Price Adjustment (Feb 2002)(29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).

\_\_\_ (5) 52.222-47, SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreements (CBA) (May 1989)(41 U.S.C. 351, *et seq.*).

(d) *Comptroller General Examination of Record*. The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at 52.215-2, Audit and Records -- Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e)

(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c) and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in paragraphs (i) through (vi) of

this paragraph in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause--

- (i) 52.219-8, Utilization of Small Business Concerns (Oct 2000)(15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$500,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.
- (ii) 52.222-26, Equal Opportunity (Apr 2002)(E.O. 11246).
- (iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001)(38 U.S.C. 4212).
- (iv) 52.222-36, Affirmative Action for Workers with Disabilities (June 1998)(29 U.S.C. 793).
- (v) 52.222-41, Service Contract Act of 1965, as Amended (May 1989), flow down required for all subcontracts subject to the Service Contract Act of 1965 (41 U.S.C. 351, *et seq.*)
- (vi) 52.247-64, Preference for Privately-Owned U.S. Flag Commercial Vessels (Apr 2003)(46 U.S.C. Appx 1241 and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64,

(2) While not required, the contractor may include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

**I. 7 52.212-5 - ADDENDUM -- CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS -- COMMERCIAL ITEMS (JAN 2004)**

The following clauses are incorporated by reference and apply to this acquisition.

- (1) 52.203-5 COVENANT AGAINST CONTINGENT FEES. APR 1984
- (2) 52.203-7 ANTI-KICKBACK PROCEDURES. JUL 1995
- (3) 52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES. FEB 1997
- (4) 52.222-37 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS. DEC 2001
- (5) 52.223-14 TOXIC CHEMICAL RELEASE REPORTING. AUG 2003
- (6) 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES. JAN 2004
- (7) 52.246-25 LIMITATION OF LIABILITY -- SERVICES (FEB 1997)

**SECTION J - LIST OF ATTACHMENTS**

**J.1 LIST OF ATTACHMENTS (MAR 1999)**

ATTACHMENT	DESCRIPTION	PAGES
A	Statement of Work	24
B	Wage Determination	26

**J.2 ATTACHMENT A - STATEMENT OF WORK (MAR 1999)**

Non-Hazardous Solid Waste Disposal

**Section A - Scope of Work:**

- (1). The Contractor shall provide non-hazardous solid waste (trash) pickup and disposal for the Department of Energy / National Energy Technology Laboratory (DOE/NETL) located at 3610 Collins Ferry Road, Morgantown, West Virginia.
- (2). The Contractor shall be responsible for picking up and delivering non-hazardous solid waste to an approved, licensed, certified disposal area/landfill. Disposal of solid waste shall be in a legal and environmentally safe manner.
- (3). The Contractor shall be required to enter the DOE/NETL facility and will be subject to security searches and regulations governing security of the facility.
- (4). The Contractor shall be responsible for cleaning up and disposing of all trash, garbage, and debris spilled from the dumpsters during the process of Contractor pickup and disposal.

**Section B - Description of Services:**

- (1). The Contractor shall provide: one (1) - 8 cubic yard sealed and two (2) - 4 cubic yard sealed dumpsters at the DOE/NETL. The dumpsters shall be emptied once a day, 5 times per week, Monday through Friday, 52 weeks per year, except on holidays. It is anticipated that the tonnage rate will be approximately one (1) ton per day.

Refuse placed in these dumpsters will consist of cafeteria waste, general office waste, and food wrappings. No wood, liquids, chemicals, metals, grass clippings, or leaves will be placed in these dumpsters.

- (2). The Contractor shall provide one (1) - 40 cubic yard dumpster which will be placed within a fenced, locked area provided by DOE/NETL. Pickup and disposal shall be on an "as called" basis and occur within forty-eight (48) hours after request. The weight of materials placed in this dumpster will vary.

The Contractor shall be paid based upon actual tonnage, at a firm fixed price tonnage rate, of the solid waste materials. It is anticipated that pickup and disposal will occur one (1) time per month with an estimated tonnage rate of eight (8) tons per pickup. The actual tonnage shall be verified by the disposal/landfill site by usage of a state certified weight scale, and subsequent issuance of a Weigh Slip. Weigh slip(s) shall accompany each invoice.

Refuse placed in this dumpster will consist of construction debris which may include: wood scraps, non-usable, damaged pallets, masonry rubble, and concrete block chunks and site waste which may include non-hazardous coal, coal ash, and coal dust. No liquids, chemicals, metals, grass clippings, or leaves will be placed in this dumpster.

**Section C - Equipment and General Requirements:**

- (1). The Contractor shall provide and be responsible for all dumpsters, dumpster maintenance, labor, equipment, handling, and transportation of waste.
- (2). All equipment and vehicles shall be equipped with OSHA approved back-up alarms.
- (3). The Contractor and DOE/NETL shall jointly determine suitable locations for the dumpsters to insure the location does not interfere with DOE/NETL use and maintains clear access by the Contractor's



collection vehicles. Dumpsters shall not be relocated without prior approval by both parties.

(4). Dumpsters shall be maintained in good condition with access doors operable, top covers in place and providing a seal against rain and vermin. Damaged or unsightly containers shall be replaced at the written request of the Contracting Officer or his Representative.

(5). Container lids shall be closed after emptying container.

**Section D - Miscellaneous:**

(1). The solid waste shall be removed and disposed of outside Government Premises.

(2). The Contractor is solely responsible for full compliance with all Federal, State, Local, and all other applicable laws, policies, rules, and regulations. In the event two or more regulations conflict, the strictest of the regulations shall apply.

(3). The Contractor shall be responsible for the provision of all permits, licenses, certifications, etc. necessary to carry out the requirements of this contract.

(4). No Recycling is included in this work.

**J.3 ATTACHMENT B – WAGE DETERMINATION**

A copy of Department of Labor Wage Determination Number 1994-2573, Rev. 20 dated 5/30/2003 is incorporated in this contract and attached as a separate pdf file (entitled 42096AttachmentB.pdf).

**SECTION K - REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFERORS OR QUOTERS**

**K.1 52.213-3 OFFEROR REPRESENTATIONS AND CERTIFICATIONS-COMMERCIAL ITEMS (JAN 2004)**

-

(a) Definitions. As used in this provision:

"Emerging small business" means a small business concern whose size is no greater than 50 percent of the numerical size standard for the NAICS code designated.

"Forced or indentured child labor" means all work or service-

(1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or

(2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

"Service-disabled veteran-owned small business concern"-

(1) Means a small business concern-

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

"Small business concern" means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and size standards in this solicitation.

"Veteran-owned small business concern" means a small business concern-

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

"Women-owned business concern" means a concern which is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of its stock is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

"Women-owned small business concern" means a small business concern-

(1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(b) Taxpayer Identification Number (TIN) (26 U.S.C. 6109, 31 U.S.C. 7701). (Not applicable if the offeror is required to provide this information to a central contractor registration database to be eligible for award.)

(1) All offerors must submit the information required in paragraphs (b)(3) through (b)(5) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the Internal Revenue Service (IRS).

(2) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationship with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

(3) Taxpayer Identification Number (TIN).

☐ TIN: [ ].

☐ TIN has been applied for.

☐ TIN is not required because:

☐ Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;

☐ Offeror is an agency or instrumentality of a foreign government;

☐ Offeror is an agency or instrumentality of the Federal Government.

(4) Type of organization.

☐ Sole proprietorship;

☐ Partnership;

☐ Corporate entity (not tax-exempt);

☐ Corporate entity (tax-exempt);

☐ Government entity (Federal, State, or local);

☐ Foreign government;

☐ International organization per 26 CFR 1.60494;

☐ Other [ ].

(5) Common parent.

☐ Offeror is not owned or controlled by a common parent;

☐ Name and TIN of common parent:

☐ Name [ ].

☐ TIN [ ].

(c) Offerors must complete the following representations when the resulting contract will be performed in the United States or its outlying areas. Check all that apply.

(1) Small business concern. The offeror represents as part of its offer that it ☐ is, ☐ is not a small business concern.

(2) Veteran-owned small business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents as part of its offer that it ☐ is, ☐ is not a veteran-owned small business concern.

(3) Service-disabled veteran-owned small business concern. [Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (c)(2) of this provision.] The offeror represents as part of its offer that it ☐ is, ☐ is not a service-disabled veteran-owned small business concern.

(4) Small disadvantaged business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents, for general statistical purposes, that it ☐ is, ☐ is not a small disadvantaged business concern as defined in 13 CFR 124.1002.

(5) Women-owned small business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents that it ☐ is, ☐ is not a women-owned small business concern.

Note: Complete paragraphs (c)(6) and (c)(7) only if this solicitation is expected to exceed the simplified acquisition threshold.

(6) Women-owned business concern (other than small business concern). [Complete only if the offeror is a women-owned business concern and did not represent itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents that it ☐ is a women-owned business concern.

(7) Tie bid priority for labor surplus area concerns. If this is an invitation for bid, small business offerors may identify the labor surplus areas in which costs to be incurred on account of manufacturing or production (by offeror or first-tier subcontractors) amount to more than 50 percent of the contract price: ☐

(8) Small Business Size for the Small Business Competitiveness Demonstration Program and for the Targeted Industry Categories under the Small Business Competitiveness Demonstration Program. [Complete only if the offeror has represented itself to be a small business concern under the size standards for this solicitation.]

(i) [Complete only for solicitations indicated in an addendum as being set-aside for emerging small businesses in one of the four designated industry groups (DIGs).] The offeror represents as part of its offer that it ☐ is, ☐ is not an emerging small business.

(ii) [Complete only for solicitations indicated in an addendum as being for one of the targeted industry categories (TICs) or four designated industry groups (DIGs).] Offeror represents as follows:

(A) Offeror's number of employees for the past 12 months (check the Employees column if size standard stated in the solicitation is expressed in terms of number of employees); or

(B) Offeror's average annual gross revenue for the last 3 fiscal years (check the Average Annual Gross Number of Revenues column if size standard stated in the solicitation is expressed in terms of annual receipts).

(Check one of the following):

Average Annual Gross Revenues

## Number of Employees

- |                                      |  |
|--------------------------------------|--|
| <input type="checkbox"/> 50 or fewer | <input type="checkbox"/> \$1 million or less       |
| <input type="checkbox"/> 51-100      | <input type="checkbox"/> \$1,000,001-\$2 million   |
| <input type="checkbox"/> 101-250     | <input type="checkbox"/> \$2,000,001-\$3.5 million |
| <input type="checkbox"/> 251-500     | <input type="checkbox"/> \$3,500,001-\$5 million   |
| <input type="checkbox"/> 501-750     | <input type="checkbox"/> \$5,000,001-\$10 million  |
| <input type="checkbox"/> 751-1,000   | <input type="checkbox"/> \$10,000,001-\$17 million |
| <input type="checkbox"/> Over 1,000  | <input type="checkbox"/> Over \$17 million         |

(9) [Complete only if the solicitation contains the clause at FAR 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns, or FAR 52.219-25, Small Disadvantaged Business Participation Program-Disadvantaged Status and Reporting, and the offeror desires a benefit based on its disadvantaged status.]

(i) General. The offeror represents that either-

(A) It [ ] is, [ ] is not certified by the Small Business Administration as a small disadvantaged business concern and identified, on the date of this representation, as a certified small disadvantaged business concern in the database maintained by the Small Business Administration (PRO-Net), and that no material change in disadvantaged ownership and control has occurred since its certification, and, where the concern is owned by one or more individuals claiming disadvantaged status, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); or

(B) It [ ] has, [ ] has not submitted a completed application to the Small Business Administration or a Private Certifier to be certified as a small disadvantaged business concern in accordance with 13 CFR 124, Subpart B, and a decision on that application is pending, and that no material change in disadvantaged ownership and control has occurred since its application was submitted.

(ii) [ ] Joint Ventures under the Price Evaluation Adjustment for Small Disadvantaged Business Concerns. The offeror represents, as part of its offer, that it is a joint venture that complies with the requirements in 13 CFR 124.1002(f) and that the representation in paragraph (c)(9)(i) of this provision is accurate for the small disadvantaged business concern that is participating in the joint venture. [The offeror shall enter the name of the small disadvantaged business concern that is participating in the joint venture: [ ]

(10) HUBZone small business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents, as part of its offer, that--

(i) It [ ] is, [ ] is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal office, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR part 126; and

(ii) It [ ] is, [ ] is not a joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (c)(10)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. [The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture: \_\_\_\_\_.] Each HUBZone small

business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

(d) Representations required to implement provisions of Executive Order 11246-

(1) Previous contracts and compliance. The offeror represents that-

(i) It ☐ has, ☐ has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation; and

(ii) It ☐ has, ☐ has not filed all required compliance reports.

(2) Affirmative Action Compliance. The offeror represents that-

(i) It ☐ has developed and has on file, ☐ has not developed and does not have on file, at each establishment, affirmative action programs required by rules and regulations of the Secretary of Labor (41 CFR parts 60-1 and 60-2), or

(ii) It ☐ has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

(e) Certification Regarding Payments to Influence Federal Transactions (31 U.S.C. 1352). (Applies only if the contract is expected to exceed \$100,000.) By submission of its offer, the offeror certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress on his or her behalf in connection with the award of any resultant contract.

(f) Buy American Act Certificate. (Applies only if the clause at Federal Acquisition Regulation (FAR) 52.225-1, Buy American Act-Supplies, is included in this solicitation.)

(1) The offeror certifies that each end product, except those listed in paragraph (f)(2) of this provision, is a domestic end product and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products. The terms "component," "domestic end product," "end product," "foreign end product," and "United States" are defined in the clause of this solicitation entitled "Buy American Act--Supplies."

(2) Foreign End Products:

Line Item No. [List as necessary]	Country of Origin
--------------------------------------	-------------------

(3) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25.

(g)(1) Buy American Act-Free Trade Agreements-Israeli Trade Act- Certificate. (Applies only if the clause at FAR 52.225-3, Buy American Act-Free Trade Agreements-Israeli Trade Act, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (g)(1)(ii) or (g)(1)(iii) of this provision, is a domestic end product and that the offeror has considered components of unknown origin to have been mined, produced, or

manufactured outside the United States. The terms "component," "domestic end product," "end product," "foreign end product," and "United States" are defined in the clause of this solicitation entitled "Buy American Act--Free Trade Agreements--Israeli Trade Act."

(ii) The offeror certifies that the following supplies are FTA country end products or Israeli end products as defined in the clause of this solicitation entitled "Buy American Act-Free Trade Agreements-Israeli Trade Act":

FTA Country or Israeli End Products:

Line Item No. [List as necessary]	Country of Origin
--------------------------------------	-------------------

(iii) The offeror shall list those supplies that are foreign end products (other than those listed in paragraph (g)(1)(ii) of this provision) as defined in the clause of this solicitation entitled "Buy American Act-Free Trade Agreements-Israeli Trade Act." The offeror shall list as other foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

Other Foreign End Products:

Line Item No. [List as necessary]	Country of Origin
--------------------------------------	-------------------

(iv) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25.

(2) Buy American Act--Free Trade Agreements--Israeli Trade Act Certificate, Alternate I (Jan 2004). If Alternate I to the clause at FAR [52.225-3](#) is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products as defined in the clause of this solicitation entitled "Buy American Act--Free Trade Agreements--Israeli Trade Act":

Canadian End Products:

Line Item No. [List as necessary]
--------------------------------------

(3) Buy American Act--Free Trade Agreements--Israeli Trade Act Certificate, Alternate II (Jan 2004). If Alternate II to the clause at FAR [52.225-3](#) is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products or Israeli end products as defined in the clause of this solicitation entitled "Buy American Act--Free Trade Agreements--Israeli Trade Act":

Canadian or Israeli End Products:

Line Item No.
---------------



Country of Origin  
[List as necessary]

(4) Trade Agreements Certificate. (Applies only if the clause at FAR 52.225-5, Trade Agreements, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (g)(4)(ii) of this provision, is a U.S.-made, designated country, Caribbean Basin country, or FTA country end product, as defined in the clause of this solicitation entitled "Trade Agreements."

(ii) The offeror shall list as other end products those end products that are not U.S.-made, designated country, Caribbean Basin country, or FTA country end products.

Other End Products:

Line Item No.                      Country of Origin  
[List as necessary]

(iii) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25. For line items subject to the Trade Agreements Act, the Government will evaluate offers of U.S.-made, designated country, Caribbean Basin country, or FTA country end products without regard to the restrictions of the Buy American Act. The Government will consider for award only offers of U.S.-made, designated country, Caribbean Basin country, or FTA country end products unless the Contracting Officer determines that there are no offers for such products or that the offers for such products are insufficient to fulfill the requirements of the solicitation.

(h) Certification Regarding Debarment, Suspension or Ineligibility for Award (Executive Order 12549). (Applies only if the contract value is expected to exceed the simplified acquisition threshold.) The offeror certifies, to the best of its knowledge and belief, that the offeror and/or any of its principals--

(1) ☐ Are, ☐ are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency; and

(2) ☐ Have, ☐ have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Federal, state or local government contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

(3) ☐ Are, ☐ are not presently indicted for, or otherwise criminally or civilly charged by a Government entity with, commission of any of these offenses.

(i) Certification Regarding Knowledge of Child Labor for Listed End Products (Executive Order 13126). [The Contracting Officer must list in paragraph (i)(1) any end products being acquired under this solicitation that are included in the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, unless excluded at 22.1503(b).]

(1) Listed end products.

Listed End Product [ ]

Listed Countries of Origin [ ]

(2) Certification. [If the Contracting Officer has identified end products and countries of origin in paragraph (i)(1) of this provision, then the offeror must certify to either (i)(2)(i) or (i)(2)(ii) by checking the appropriate block.]

[ ] (i) The offeror will not supply any end product listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product.

[ ] (ii) The offeror may supply an end product listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product. The offeror certifies that it has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any such end product furnished under this contract. On the basis of those efforts, the offeror certifies that it is not aware of any such use of child labor.

## **K.2 52.215-6 PLACE OF PERFORMANCE. (OCT 1997)**

(a) The offeror or respondent, in the performance of any contract resulting from this solicitation, [ ] intends, [ ] does not intend [*check applicable block*] to use one or more plants or facilities located at a different address from the address of the offeror or respondent as indicated in this offer or response to request for information.

(b) If the offeror or respondent checks “intends” in paragraph (a) of this provision, it shall insert in the following spaces the required information:

Place of Performance  
(Street Address, City,  
State, County, Zip Code)

Name and Address of Owner  
and Operator of the Plant  
or Facility if Other than  
Offeror or Respondent

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## **K.3 52.222-22 PREVIOUS CONTRACTS AND COMPLIANCE REPORTS. (FEB 1999)**

The offeror represents that -

(a) It [ ] has, [ ] has not participated in a previous contract or subcontract subject the Equal Opportunity clause of this solicitation;

(b) It [ ] has, [ ] has not filed all required compliance reports; and

(c) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

## **K.4 52.222-25 AFFIRMATIVE ACTION COMPLIANCE. (APR 1984)**

The offeror represents that -

(a) It [ ] has developed and has on file, [ ] has not developed and does not have on file, at each

establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2); or

(b) It ☐ has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

**K.5 52.223-13 CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING. (AUG 2003)**

(a) Executive Order 13148, of April 21, 2000, Greening the Government through Leadership in Environmental Management, requires submission of this certification as a prerequisite for contract award.

(b) By signing this offer, the offeror certifies that -

(1) As the owner or operator of facilities that will be used in the performance of this contract that are subject to the filing and reporting requirements described in section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023) and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106), the offeror will file and continue to file for such facilities for the life of the contract the Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of EPCRA and section 6607 of PPA; or

(2) None of its owned or operated facilities to be used in the performance of this contract is subject to the Form R filing and reporting requirements because each such facility is exempt for at least one of the following reasons: *[Check each block that is applicable.]*

☐ (i) The facility does not manufacture, process, or otherwise use any toxic chemicals listed in 40 CFR 372.65;

☐ (ii) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

☐ (iii) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

☐ (iv) The facility does not fall within the following Standard Industrial Classification (SIC) codes or their corresponding North American Industry Classification System sectors:

(A) Major group code 10 (except 1011, 1081, and 1094).

(B) Major group code 12 (except 1241).

(C) Major group codes 20 through 39.

(D) Industry code 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce).

(E) Industry code 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C (42 U.S.C. 6921, et seq.), 5169, 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); or

☐ (v) The facility is not located in the United States or its outlying areas.

**K.6 COMPLIANCE WITH VETERANS EMPLOYMENT REPORTING REQUIREMENTS (JUNE 1999)**

(a) The Offeror represents that, if it is subject to the reporting requirements of 38 U.S.C. 4212(d) (i.e. the VETS-100 report required by the Federal Acquisition Regulation clause 52.222-37, Employment Reports on Disabled Veterans and Veterans of the Vietnam Era), it has [ ], has not [ ] submitted the most recent report required by 38 U.S.C. 4212(d).

(b) An Offeror who checks “has not” may not be awarded a contract until the required reports are filed. (31 U.S.C. 1354)

**K.7 SIGNATURE/CERTIFICATION (SEPT 2003)**

By typing the name of the authorized organizational representative (i.e. the administrative official, who, on behalf of the proposing organization, is authorized to make certifications and assurances or to commit the applicant to the conduct of a project), the offeror certifies, under penalty of law, that the representations and certifications are accurate, current, and complete. The offeror further certifies that it will notify the Contracting Officer of any changes to these representations and certifications. The representations and certification made by the offeror, as contained herein, concern matters within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent representation or certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

\_\_\_\_\_  
Typed Name and Title of the Officer or Employee  
Responsible for the Offer

\_\_\_\_\_  
Date of Execution

Name and Address of Organization:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Solicitation Number: \_\_\_\_\_

## **SECTION L - INSTRUCTIONS, CONDITIONS, AND NOTICES TO OFFERORS OR QUOTERS**

### **L.1 52.252-1 SOLICITATION PROVISIONS INCORPORATED BY REFERENCE. (FEB 1998)**

This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its quotation or offer. In lieu of submitting the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer. Also, the full text of a solicitation provision may be accessed electronically at this/these address(es):

Federal Acquisition Regulations (Clauses starting with 52): <http://www.arnet.gov/far/index.html>  
 Department of Energy Regulations (Clauses starting with 952): <http://professionals.pr.doe.gov> or  
<http://www.netl.doe.gov/business/index.html>

### **L.2 52.212-1 INSTRUCTIONS TO OFFERORS -- COMMERCIAL ITEMS (JAN. 2004)**

(a) *North American Industry Classification System (NAICS) code and small business size standard.* The NAICS code and small business size standard for this acquisition appear in Block 10 of the solicitation cover sheet (SF 1449). However, the small business size standard for a concern which submits an offer in its own name, but which proposes to furnish an item which it did not itself manufacture, is 500 employees.

(b) *Submission of offers.* Submit signed and dated offers to the office specified in this solicitation at or before the exact time specified in this solicitation. Offers may be submitted on the SF 1449, letterhead stationery, or as otherwise specified in the solicitation. As a minimum, offers must show --

- (1) The solicitation number;
- (2) The time specified in the solicitation for receipt of offers;
- (3) The name, address, and telephone number of the offeror;
- (4) A technical description of the items being offered in sufficient detail to evaluate compliance with the requirements in the solicitation. This may include product literature, or other documents, if necessary;
- (5) Terms of any express warranty;
- (6) Price and any discount terms;
- (7) "Remit to" address, if different than mailing address;
- (8) A completed copy of the representations and certifications at FAR 52.212-3;
- (9) Acknowledgment of Solicitation Amendments;
- (10) Past performance information, when included as an evaluation factor, to include recent and relevant contracts for the same or similar items and other references (including contract numbers, points of contact with telephone numbers and other relevant information); and
- (11) If the offer is not submitted on the SF 1449, include a statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation. Offers that fail to furnish required representations or information, or reject the terms and conditions of the solicitation may be excluded from consideration.

(c) *Period for acceptance of offers.* The offeror agrees to hold the prices in its offer firm for 30 calendar days from the date specified for receipt of offers, unless another time period is specified in an addendum to the solicitation.

*(d) Product samples.* When required by the solicitation, product samples shall be submitted at or prior to the time specified for receipt of offers. Unless otherwise specified in this solicitation, these samples shall be submitted at no expense to the Government, and returned at the sender's request and expense, unless they are destroyed during preaward testing.

*(e) Multiple offers.* Offerors are encouraged to submit multiple offers presenting alternative terms and conditions or commercial items for satisfying the requirements of this solicitation. Each offer submitted will be evaluated separately.

*(f) Late submissions, modifications, revisions, and withdrawals of offers.*

(1) Offerors are responsible for submitting offers, and any modifications, revisions, or withdrawals, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that offers or revisions are due.

(2)

(i) Any offer, modification, revision, or withdrawal of an offer received at the Government office designated in the solicitation after the exact time specified for receipt of offers is "late" and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and—

(A) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of offers; or

(B) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers; or

(C) If this solicitation is a request for proposals, it was the only proposal received.

(ii) However, a late modification of an otherwise successful offer, that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(3) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the offer wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(4) If an emergency or unanticipated event interrupts normal Government processes so that offers cannot be received at the Government office designated for receipt of offers by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation or other notice of an extension of the closing date, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(5) Offers may be withdrawn by written notice received at any time before the exact time set for receipt of offers. Oral offers in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before the exact time set for receipt of offers, subject to the conditions specified in the solicitation concerning facsimile offers. An offer may be withdrawn in person by an offeror or its authorized

representative if, before the exact time set for receipt of offers, the identity of the person requesting withdrawal is established and the person signs a receipt for the offer.

(g) *Contract award (not applicable to Invitation for Bids)*. The Government intends to evaluate offers and award a contract without discussions with offerors. Therefore, the offeror's initial offer should contain the offeror's best terms from a price and technical standpoint. However, the Government reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary. The Government may reject any or all offers if such action is in the public interest; accept other than the lowest offer; and waive informalities and minor irregularities in offers received.

(h) *Multiple awards*. The Government may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific limitations. Unless otherwise provided in the Schedule, offers may not be submitted for quantities less than those specified. The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the offeror specifies otherwise in the offer.

(i) *Availability of requirements documents cited in the solicitation*.

(1)(i) The GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101-29, and copies of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained for a fee by submitting a request to--

GSA Federal Supply Service Specifications Section

Suite 8100  
470 L'Enfant Plaza, SW  
Washington, DC 20407  
Telephone (202) 619-8925)

Facsimile (202 619-8978).

(ii) If the General Services Administration, Department of Agriculture, or Department of Veterans Affairs issued this solicitation, a single copy of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained free of charge by submitting a request to the addressee in paragraph (i)(1)(i) of this provision. Additional copies will be issued for a fee.

(2) The DoD Index of Specifications and Standards (DoDISS) and documents listed in it may be obtained from the--

Department of Defense Single Stock Point (DoDSSP)  
Building 4, Section D

700 Robbins Avenue  
Philadelphia, PA 19111-5094

Telephone (215) 697-2667/2179

Facsimile (215) 697-1462.

(i) Automatic distribution may be obtained on a subscription basis.

(ii) Order forms, pricing information, and customer support information may be obtained—

(A) By telephone at (215) 697\_2667/2179; or

(B) Through the DoDSSP Internet site at <http://dodssp.daps.mil>.

(3) Nongovernment (voluntary) standards must be obtained from the organization responsible for their preparation, publication or maintenance.

(j) *Data Universal Numbering System (DUNS) Number.* (Applies to offers exceeding \$25,000, and offers of \$25,000 or less if the solicitation requires the Contractor to be registered in the Central Contractor Registration (CCR) database. The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" or "DUNS+4" followed by the DUNS or DUNS+4 number that identifies the offeror's name and address. The DUNS+4 is the DUNS number plus a 4-character suffix that may be assigned at the discretion of the offeror to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see FAR Subpart 32.11) for the same parent concern. If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one. An offeror within the United States may contact Dun and Bradstreet by calling 1-866-705-5711 or via the Internet at <http://www.dnb.com>. An offeror located outside the United States must contact the local Dun and Bradstreet office for DUNS number.

(k) *Central Contractor Registration.* Unless exempted by an addendum to this solicitation, by submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the CCR database prior to award, during performance and through final payment of any contract resulting from this solicitation. If the Offeror does not become registered in the CCR database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror. Offerors may obtain information on registration and annual confirmation requirements via the Internet at <http://www.ccr.gov> or by calling 1-888-227-2423 or 269-961-5757.

### **L.3    52.212-1 - ADDENDUM -- 52.212-1 INSTRUCTIONS TO OFFERORS -- COMMERCIAL ITEMS (JAN. 2004)**

Period for acceptance of offers - The offeror agrees to hold the prices in its offer firm for no less than 180 calendar days from the date specified for receipt of offers.

Submission of Offers – See Section L, Articles L.7 and L.13.

### **L.4    CONSECUTIVE NUMBERING (JAN 1999)**

Due to automated procedures employed in formulating this document, clauses and provisions contained within it may not always be consecutively numbered.

### **L.5    CONTENT OF RESULTING CONTRACT (NOV 2003)**

Any contract awarded as a result of this RFQ will contain PART I - The Schedule, PART II - Contract Clauses, and PART III, Section J - List of Documents, Exhibits and Other Attachments (excluding those attachments including in this RFQ relating to submission of offers). Blank areas appearing in these sections, indicated by "[ ]" will be completed prior to contract award.

### **L.6    RESPONSIBLE PROSPECTIVE CONTRACTORS (AUG 2003)**

All responsible individuals, corporations, non-profit organizations, educational institutions, and state or local governments who have three or more years of experience in non-hazardous solid waste disposal may submit offers for consideration. The general and additional minimum standards for responsible prospective Contractors set forth at FAR 9.1 apply.

DOE may conduct preaward surveys in accordance with FAR 9.106 and may solicit from available sources, relevant information concerning the offeror's record of past performance, and use such information in making determinations of prospective offeror responsibility.

### **L.7    TIME, DATE AND PLACE OFFERS ARE DUE (JAN 2000)**



The date and time for submission of offers shall be **NO LATER THAN FRIDAY, APRIL 16, 2004, 4:00 p.m.**, local prevailing time at the place designated for receipt of offers. (See the submission instructions, including the provision describing treatment of late submissions, modifications, and withdrawals of offers.)

Submission by U.S. Mail

Offers must be received at the following mailing address:

U. S. Department of Energy  
National Energy Technology Laboratory  
Attn: Angela Bosley, MS I07  
Post Office Box 880  
Morgantown, WV 26507-0880

Submission by Other than U.S. Mail

Offerors electing to submit by means other than the U.S. Mail, including commercial courier service, assume the full responsibility of insuring that offers are received at the following hand-carry address by the date and time specified above:

U. S. Department of Energy  
National Energy Technology Laboratory  
Attn: Angela Bosley, MS I07  
3610 Collins Ferry Road  
Morgantown, WV 26507-0880

Such offers must be closed and sealed as if for mailing.

External Marking of Offers

Offers shall be marked with the following information:

- (1) Address of Proposer
- (2) Solicitation Number
- (3) Due Time and Date of Offers

**L.8 NUMBER OF AWARDS (NOV 1997)**

It is anticipated that there will be one award(s) resulting from this solicitation. However, the Government reserves the right to make any number of awards, or no award, if considered to be in the Government's best interest to do so.

**L.9 FALSE STATEMENTS (NOV 1997)**

Offers must set forth full, accurate, and complete information as required by this solicitation (including attachments). The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

**L.10 EXPENSES RELATED TO OFFEROR SUBMISSIONS (FEB 1998)**

This solicitation does not commit the Government to pay any costs incurred in the submission of any offer or in making necessary studies or designs for the preparation thereof or to acquire or contract for any services.

**L.11 CLASSIFIED MATERIAL - NONE (NOV 1997)**

Performance under the proposed contract is not anticipated to involve access to classified material.

**L.12 AMENDMENT OF THE SOLICITATION (MAR 1999)**

The only method by which any term of this solicitation may be modified is by an express, formal amendment to the solicitation generated by the issuing office. No other communication made at any scheduled preproposal conference or subsequent discussions, whether oral or in writing, will modify or supersede the terms of this solicitation. All amendments to this solicitation will be posted on the NETL Homepage at “<http://www.netl.doe.gov/business/solicit/>”. Receipt of an amendment to a solicitation by an offeror must be acknowledged and received prior to the hour and date specified for receipt of offers.

**L.13 PREPARATION INSTRUCTIONS**

The offeror shall submit their offer under the subject RFQ by completing the following portions of the solicitation:

1. The SF1449 Form – Solicitation, Contract, and Order for Commercial Items (Page 1 of this solicitation)
  - (a) Offerors shall complete Blocks, 17, 23, 24, and 30a, b, and c. The SF1449 is to be fully executed, including the acknowledgement of amendments, if applicable and signed by an authorized individual of the proposing organization. Two signed originals shall be included.
  - (b) The offeror agrees to hold the prices in its offer firm for no less than 180 calendar days from the date specified for receipt of offers.
  - (c) Signature Authority. The person signing the SF1449 must have authority to commit the offeror to all of the provisions of the offer, fully recognizing that the Government has the right, by terms of the solicitation, to make an award without further discussion if it so elects.

2. Section B

All requested prices for items in Section B, Article B.1.

3. Offeror Representations and Certifications Fully Executed

Offeror Representations and Certifications included under Section K of this solicitation are to be fully executed and signed.

4. Exceptions and Deviations

The Offeror shall identify and explain any exceptions or deviations taken or conditional assumptions made with respect to the model contract and Offeror Representations and Certifications. Any exceptions taken must contain sufficient justification to permit evaluation. The benefit to the Government shall be explained for each exception taken. Such exceptions will not, of themselves, automatically cause a offer to be termed unacceptable. A large number of exceptions, or one or more significant exceptions not providing benefit to the Government, however, may result in rejection of your offer(s) as unacceptable.

**L.14 INFORMATION OF AWARD (NOV 1997)**

Written notice to unsuccessful offerors and contract award information will be promptly released in accordance with DOE regulations applicable to negotiated acquisitions.

**L.15 DISPOSITION OF SOLICITATION MATERIALS AND OFFERS (FEB 1998)**

Drawings, specifications, and other documents supplied with the solicitation may be retained by the offeror (unless there is a requirement for a document to be completed and returned as a part of the offer).

Offeror's offers will not be returned (except for timely withdrawals).

**L.16 52.233-2 SERVICE OF PROTEST. (AUG 1996)**

(a) Protests, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the General Accounting Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from the Department of Energy, National Energy Technology Laboratory, 3610 Collins Ferry Road, P.O. Box 880, Mail Stop 107, Morgantown, WV 26507-0880.

(b) The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.

**L.17 952.233-2 SERVICE OF PROTEST.**

As prescribed in 48 CFR 933.106(a), add the following to the end of the clause at FAR 52.233-2:

(c) Another copy of a protest filed with the General Accounting Office shall be furnished to the following address within the time periods described in paragraph (b) of this clause: U.S. Department of Energy, Assistant General Counsel for Procurement and Financial Assistance (GC-61), 1000 Independence Avenue, S.W., Washington, DC 20585, Fax: (202) 586-4546.

## **SECTION M - EVALUATION FACTORS FOR AWARD**

### **M.1 GENERAL (MAR 1998)**

Offers will be evaluated in accordance with applicable DOE acquisition policies and procedures. Evaluation will be performed to determine the offeror's understanding of work to be performed, technical approach, potential for completing the work as specified in the solicitation, cost reasonableness, the probable cost to the Government, and ranking with competing offerors.

Award will be made to that responsible offeror(s), whose offer(s), conforming to this solicitation, is (are) considered most advantageous to the Government, considering the Evaluation Criteria in this Section M.

### **M.2 52.212-2 EVALUATION -- COMMERCIAL ITEMS (JAN 1999)**

(a) The Government will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered. The following factors shall be used to evaluate offers:

#### Price

(b) *Options.* The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are significantly unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

(c) A written notice of award or acceptance of an offer, mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Government may accept an offer (or part of an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.

### **M.3 52.217-5 EVALUATION OF OPTIONS (JUL 1990)**

Except when it is determined in accordance with FAR 17.206(b) not to be in the Government's best interests, the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. Evaluation of options will not obligate the Government to exercise the option(s).